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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

FILED
HARRISBURG

DEC 20 2000

MARY E. D'ANDREA, CLERK
Per _____
DEPUTY CLERK

JEROME K. HOLMES,
Petitioner

vs.

ROBERT SHANNON, ET AL.,
Respondents

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CIVIL ACTION NO. 1:CV-00-1942
(Judge Rambo)

**RESPONDENTS' MOTION TO DISMISS
PETITION FOR WRIT OF HABEAS CORPUS**

TO THE HONORABLE SYLVIA H. RAMBO, UNITED STATES DISTRICT JUDGE:

AND NOW, comes Edward M. Marsico, Jr., District Attorney of Dauphin County, by James P. Barker, Deputy District Attorney, who, on behalf of the Respondents, files this motion to dismiss the petition for writ of habeas corpus, and in support thereof avers the following:

1. On November 7, 2000, Petitioner, Jerome K. Holmes, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254.

2. Holmes is an inmate at the State Correctional Institution at Mahanoy, Frackville, Pennsylvania, pursuant to a judgment of conviction and sentence from the Court of Common Pleas of Dauphin County dated March 18, 1994.

3. Holmes' direct appeal was quashed by the Superior Court because Holmes was a fugitive.

4. Holmes' petition under the Post Conviction Relief Act (PCRA) was denied by the trial court as untimely.

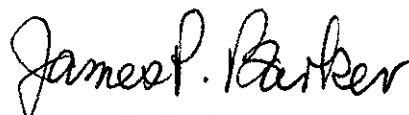
5. The Superior Court affirmed the denial of PCRA relief and the Supreme Court of Pennsylvania denied Holmes' petition for allocatur.

6. The claims asserted by Holmes in his petition for writ of habeas corpus are procedurally barred under Pennsylvania law.

7. In moving to dismiss the petition for writ of habeas corpus, Respondents are not addressing the merits of the petition. In the event this Honorable Court excused the procedural default, Respondents will address the merits as directed. See generally White v. Lewis, 874 F.2d 599 (9th Cir. 1989).

WHEREFORE, the Respondents respectfully move this Court for an order dismissing the petition for writ of habeas corpus.

Respectfully submitted,



James P. Barker
Deputy District Attorney

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CERTIFICATE OF SERVICE

This is to certify that a copy of the Respondents' Motion to Dismiss Petition for Writ of Habeas Corpus in the above-captioned matter was sent, on the below stated dated, to the Petitioner, Jerome Holmes, DJ-3328, at the State Correctional Institution at Mahanoy, 301 Morea Road, Frackville, Pennsylvania 17932.

James P. Barker

James P. Barker
Deputy District Attorney
Dauphin County Court House
Front and Market Streets
Harrisburg, Pennsylvania 17101
(717) 255-2770
Attorney for Respondents

Dated: December 20, 2000